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IN THE
Supreme Court of the United States
October Term, 1972

NO. 72-887
AMERICAN PARTY OF TEXAS, ET AL., *Appellants*
v.
MARK WHITE, *Appellee*

NO. 72-942
ROBERT HAINSWORTH, *Appellant*
v.
MARK WHITE, JR., SECRETARY OF STATE
OF TEXAS, *Appellee*

On Appeal From The United States District Court
For The Western District Of Texas

**MOTION FOR SPECIAL LEAVE
TO FILE SUPPLEMENTAL BRIEF
AND
SUPPLEMENTAL BRIEF OR MEMORANDUM
OF APPELLANT**

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SUPPLEMENTAL BRIEF

To The Honorable Supreme Court:

Now Comes the Appellant and respectfully moves the Court under Rule 41 (6), and (5), For Special Leave to File a Supplemental Brief for the following reasons:

1. That Movant read in a local newspaper some time ago, that the Chief Justice of the Supreme Court would be a special guest of the Japanese government for one

week, but that the tour would not necessitate any interruption in the schedule of the Supreme Court because the Court would be taking one of the longest of several recesses scheduled for the 1973-1974 term, and that the Court would be in recess from Monday, January 21, 1974 to February 15, 1974.

That on account of the length of this recess, it has prompted to some extent this Motion For Special Leave To File a Supplemental Brief, although the case has been orally argued and submitted, which supplemental brief, it is hoped will be of some assistance to the Court in making a decision that is comprehensive in the above captioned case, *Hainsworth v. White*, No. 72-942.

2. That during the oral argument of this case, *Hainsworth v. White*, on November 5, 1973, in answer to a question of the Chief Justice, the counsel for the Appellant, unintentionally, may have, in his reply, given offense to the Chief Justice and Justices of the Court, and if so, I do respectfully apologize to the Chief Justice and to the Justices.

That a supplemental brief, if special leave is allowed to the Movant to file one, will permit a reply to the question asked by the Chief Justice to be given that is more complete, and may be of some assistance to the Court in the rendering of a decision that is full; because it is respectfully submitted that the answer to this question may lie near to the heart of this case.

3. That also, under Rule 41 (5), Movant requests special leave to include in his supplemental brief, matters that may be pertinent because of decisions handed down by the Supreme Court since oral argument of the above captioned case.

4. That if special leave is granted by the Court as requested above, it is further respectfully requested that the Movant be allowed until February 15, 1974, to file a supplemental brief.

Respectfully submitted,

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**SUPPLEMENTAL BRIEF OR MEMORANDUM
OF APPELLANT**

To The Honorable Supreme Court:

An Endeavor To Give A Better Answer.

During oral argument in the above case on November 5, 1973, the Honorable Chief Justice inquired as to

the Appellant having a friend who could help in obtaining signatures to his nominating petition? The Appellant replied—He is my friend who signs my application.

Endeavoring to give a better answer to the question, the following is submitted: From the Bible and in the Book of Proverbs, Chapter XVIII, and a portion of verse 24, reads: "A man that hath friends must shew himself friendly; * * *

One who has a friend, can not take advantage of his friend. One who is trying to become an independent candidate can not allow his friend or a friend to give of his time and labor without pay.

And the cost of obtaining 500 notarized signatures to a nominating petition can come within the pale of *Bullock v. Carter*, 405 U.S. 134, a high filing fee case.

In addition to the above, since the filing of Appellant's Brief and since the oral argument, late cases, *Kusper v. Pontikes*, 94 S.Ct. 303, (1973) and *Communist Party of Indiana v. Whitcomb*, 94 S.Ct. 656, (1974) have been decided, and for this reason also this Supplemental Brief or Memorandum is submitted.

STATEMENT

Restrictions, and the right of a voter to cast a ballot for a different political party or candidate than the political party or candidate voted for in the prior primary election, or prior election.

ARGUMENT

That in *Kusper v. Pontikes*, supra, Mr. Justice Stewart delivering the opinion, the Court held that

freedom to associate with others for the common advancement of political beliefs and ideas is a basic constitutional freedom protected by the First and Fourteenth Amendments. And it would seem to follow that where a basic constitutional freedom is involved in the total electoral process that a State, and the State of Texas would have to show "A Compelling State Interest" in order to justify the rigid restrictions and impediments to access to the ballot by independent or non-partisan candidates.

Also in the *Kusper* case, the State of Illinois urged that the Illinois Statute served the purpose of preventing raiding, which is what the State of Texas urged in the set of cases now before the Court and the three Judge District Court upheld that view. But the Supreme Court decided in the *Kusper* case that the Illinois Statute locked the voter in to one party. This also appears to be true in the case of the Texas Anti-Raiding Statute in that independent candidates are not able to obtain signatures of qualified voters to their nominating petition until after the major party primaries are over.

STATEMENT

An appropriate measuring rod and guidelines.

ARGUMENT

In *Communist Party of Indiana v. Whitcomb*, Mr. Justice Brennan writing the opinion of the Court quoted from *Kusper v. Pontikes* "the right to associate with the political party of one's choice is an integral part of the basic constitutional freedom" and the states may not infringe upon basic constitutional freedoms in exercising

their powers of supervision over elections, and in setting qualifications for voters.

And in the minority opinion where there was concurrence in the result, but a difference of view as to the issues to be addressed, and citing a holding of the Supreme Court that a discriminatory preference for established parties under a State's Electoral System can be justified by only "a compelling State interest". And that the Indiana State Statute denied equal protection under the Fourteenth Amendment.

The right to associate with the political party of one's choice is an integral part of basic constitutional freedom. Also, by like reasoning, the right to associate with an independent candidate and to vote for an independent candidate is an integral part of this basic constitutional freedom.

That in the case of *Hainsworth v. White*, it is respectfully submitted to the Court that the case can be decided on the grounds set forth in the majority opinion of the above case, upholding the legal principles pertaining to State regulation of access to the ballot; or as well as on the grounds set forth in the minority opinion.

Also, on the basis of the grounds of the minority opinion, the equal Protection clause; would not the Republican Party in Texas, as well as the Democratic Party in Texas and also the minority parties, in order to have each of their respective candidates to attain initial ballot listing, be required to obtain some percentage of the votes cast for Governor in the preceding election in the area or territory or district for which the office is sought? That a nominating petition affords the lowest

common denominator which can be applied to all candidates for initial listing on the ballot, and equality of the laws would be afforded by varying the percentage requirements. And that the major parties could also add additional requirements as they so desired.

Too, this percentage-wise nominating petition requirement would aid in meeting the Texas Constitution requirement that the members of the State House of Representatives shall be chosen by the qualified electors.

CONCLUSION

For the reasons previously submitted, together with the reasons supplemented above, it is respectfully submitted to the Court that the judgment of the Lower Court be reversed, and that Art. 13.50 V.A.T.S. Texas Election Code be declared unconstitutional, and for such other and further relief that the Supreme Court may consider to be just and equity.

May GOD bless the Court, and long live the Court.

Respectfully submitted,

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